

IN THE COURT OF APPEALS OF THE STATE OF IDAHO

Docket No. 34305

STATE OF IDAHO,	)	2008 Unpublished Opinion No. 526
	)	
Plaintiff-Respondent,	)	Filed: June 27, 2008
	)	
v.	)	Stephen W. Kenyon, Clerk
	)	
JOHN RANDALL HEFFNER,	)	THIS IS AN UNPUBLISHED
	)	OPINION AND SHALL NOT
Defendant-Appellant.	)	BE CITED AS AUTHORITY
	)	

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Appeal from the District Court of the Fourth Judicial District, State of Idaho, Ada County. Hon. Joel D. Horton, District Judge.

Order relinquishing jurisdiction, affirmed; order denying Idaho Criminal Rule 35 motion for reduction of sentence, affirmed.

Molly J. Huskey, State Appellate Public Defender; Heather M. Carlson, Deputy Appellate Public Defender, Boise, for appellant.

Hon. Lawrence G. Wasden, Attorney General; Lori A. Fleming, Deputy Attorney General, Boise, for respondent.

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PER CURIAM

John Randall Heffner was convicted of possession of methamphetamine, Idaho Code § 37-2732(c). The district court imposed a unified six-year sentence with two years determinate and retained jurisdiction for 180 days. At the conclusion of the retained jurisdiction program, the court relinquished jurisdiction and ordered execution of Heffner's sentence. Heffner filed an Idaho Criminal Rule 35 motion for reduction of the sentence which was denied. He appeals the court's decision to relinquish jurisdiction and the denial of his Rule 35 motion.

The decision as to whether to place a defendant on probation or, instead, to relinquish jurisdiction is committed to the discretion of the sentencing court. *State v. Lee*, 117 Idaho 203, 205-06, 786 P.2d 594, 596-97 (Ct. App. 1990). It follows that a decision to relinquish jurisdiction will not be disturbed on appeal except for an abuse of discretion. *State v. Chapman*, 120 Idaho 466, 472, 816 P.2d 1023, 1029 (Ct. App. 1991). The standards governing the trial

court's decision and our review were explained in *State v. Merwin*, 131 Idaho 642, 962 P.2d 1026 (1998):

“Refusal to retain jurisdiction will not be deemed a ‘clear abuse of discretion’ if the trial court has sufficient information to determine that a suspended sentence and probation would be inappropriate under [the statute].” While a Review Committee report may influence a court’s decision to retain jurisdiction, “it is purely advisory and is in no way binding upon the court.” Idaho Code § 19-2521 sets out the criteria a court must consider when deciding whether to grant probation or impose imprisonment. . . . “A decision to deny probation will not be held to represent an abuse of discretion if the decision is consistent with [the § 19-2521] standards.”

*Id.* at 648-49, 962 P.2d at 1032-33 (citations omitted). The record in this case shows that the district court properly considered the information before it and determined that probation was not appropriate.

A Rule 35 motion is a request for leniency which is addressed to the sound discretion of the sentencing court. *State v. Knighton*, 143 Idaho 318, 319, 144 P.3d 23, 24 (2006); *State v. Allbee*, 115 Idaho 845, 846, 771 P.2d 66, 67 (Ct. App. 1989). In presenting a Rule 35 motion, the defendant must show that the sentence is excessive in light of new or additional information subsequently provided to the district court in support of the motion. *State v. Huffman*, 144 Idaho 201, 159 P.3d 838 (2007). Our focus on review is upon the nature of the offense and the character of the offender. *State v. Reinke*, 103 Idaho 771, 772, 653 P.2d 1183, 1184 (Ct. App. 1982). Where a sentence is not illegal, the appellant must show that it is unreasonably harsh in light of the primary objective of protecting society and the related goals of deterrence, rehabilitation and retribution. *State v. Broadhead*, 120 Idaho 141, 145, 814 P.2d 401, 405 (1991), *overruled on other grounds by State v. Brown*, 121 Idaho 385, 825 P.2d 482 (1992); *State v. Toohill*, 103 Idaho 565, 568, 650 P.2d 707, 710 (Ct. App. 1982).

Having reviewed the record, including the new information submitted with Heffner’s Rule 35 motion, we find no abuse of discretion in the district court’s denial of the motion. Accordingly, the district court’s decision to relinquish jurisdiction and the order denying Heffner’s I.C.R. 35 motion are affirmed.